SIKKIM

GOVERNMENT GAZETTE

EXTRAORDINARY
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GOVERNMENT OF SIKKIM
LAW DEPARTMENT
GANGTOK

No. 22/LD/P/2008 **Date: 24.07.2008**

NOTIFICATION

The following Act passed by the Sikkim Legislative Assembly and having received the assent of the Governor on 28th day of June, 2008 is hereby published for general information:-

THE SIKKIM SUCCESSION ACT, 2008
(Act No. 22 of 2008)
AN ACT

to provide for law relating to succession to movable and immovable properties of Sikkimese people.

Be it enacted by the Legislature of Sikkim in the Fifty-ninth Year of the Republic of India as follows:-

PRELIMINARY

Short title, extent and commencement.

1. (1) This Act may be called The Sikkim Succession Act, 2008.
(2) It extends to the whole of Sikkim.
(3) It shall come into force on such date as the State Government may by notification in the Official Gazette appoint and different dates may be appointed for different provisions of this Act.

Application of the Act.

2. The Act shall apply to,-
a) any person who possesses Sikkim Subject Certificate/Certificate of Identification (COI);
b) descendents of Sikkim Subject Certificate holder identified through COI.

Note:- A woman who has married a non- Sikkimese or has acquired foreign citizenship shall not be eligible to enjoy the rights of descendants and heirs held as descendants under this Act.

Note:- Descendents include sons or daughters and their lineal descendents and include those as specified in Schedule I.

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Definitions.

3. In this Act, unless the context otherwise requires,-

(a) "Act" means The Sikkim Succession Act, 2008;
(b) "administrator" means a person appointed by competent authority to administer the estate of a deceased person;
(c) "Government" means State Government of Sikkim;
(d) "heir" means any person male or female who is entitled to succeed to the property of an intestate under this Act;
(e) "intestate" means a person is deemed to die intestate in respect of property of which he or she has not made testamentary; disposition capable of taking effect;
(f) "minor" means a person who (has not attained the age of majority) or has not completed the age of eighteen years;
(g) "probate" means copy of a will certified under the seal of court of competent jurisdiction with a grant of administration to the estate of the testator;
(h) "Sikkimese" means persons belonging to Bhutia, Lepcha and Nepali Community of Sikkimese origin identified through Sikkim Subject Certificate or Certificate of Identification;
(i) "will" means the legal declaration of the intention of a testator with respect to his property which he desires to be carried out after his death.

Act not to apply to certain person/class or community.

4. (1) The State Government may by notification in the Official Gazette exempt the applicability of this Act to the members of community or tribe or sect or such other category etc. as may be specified if it is considered expedient to do so.

(2) The State Government may by notification withdraw or revoke such exemption prospectively.

PART I
Intestate Succession

Intestate property.

5. (1) A person is deemed to die intestate in respect of all property of which he has not made a testamentary disposition.

(2) Where the intestate has left no widow his property shall go to his lineal descendants or to those not being lineal descendants according to rules of succession contained herein after and if he has left none shall go to the next of descendants from his brother or to sister if unmarried or abandoned by husband.

(3) A husband shall have the same right in respect of his wife's property, if she dies intestate, as a widow has in respect of her husband's property if he dies intestate.

Devolution of property.

6. (1) When a male Sikkimese who dies after the commencement of this Act having at the time of his death an interest in the property or has a self-acquired property, the property shall devolve to the extent of his interest by survivorship upon the surviving members of his family which includes his wife, sons and daughters if unmarried in equal proportion:

Provided that if the deceased has left behind him a surviving female relative who claims interest in such property in such cases the property shall devolve to the extent she is entitled.

(2) If two or more heirs succeed together to the property of an intestate they shall take property ***per capita and as inheriting respective shares in equal proportion.***

(3) The property of an intestate devolves upon the wife or the husband or upon those who are of the kindred of the deceased as per the Schedule.

(4) Where an intestate has left a widow without any lineal descendants, the property shall devolve to the next of the descendents of the brother of the deceased husband in the manner as specified in the Schedule.

(5) Where a female heir or descendant marries a person who does not possess Sikkim Subject Certificate/COI or has acquired foreign citizenship, such female heir/ descendant shall follow the personal law of her husband and as such shall not acquire any interest in the property:

(6) Where the parents of a minor die intestate such property shall be looked after by administrator if none of the relatives of the deceased within the eligible category of heir comes forward to look after the property.

(7) Where a person has no son, the property will devolve on the daughter, subject to sub-section (5) of Section 6.

(8) An abandoned or divorced woman having the liability to take care of the children and has no source of income, shall have the right to a share in equal proportion along with other heirs to the property of the husband:

Provided that where woman has deserted her husband with or without children and has remarried shall forfeit her right to her share in the husband's property. However, the children shall be eligible to their share of property as per the law.

(9) The property of an intestate shall devolve in equal shares among all the heirs.

Right of child in womb

7. Notwithstanding anything contained in sub-section (1) of Section 6, a child who was in the womb at the time of the death of an intestate and who is subsequently born alive shall have the same right to succeed to the intestate as if he or she had been born before the death of the intestate.

Preference of heir.

8. Heir related to an intestate by full blood shall be preferred to heirs related by half blood, if the nature of relationship is the same in other respect.

Disqualification of heirs.

9. (1) A person who commits murder or abets the commission of murder shall be disqualified from inheriting the property of the person murdered.

(2) If any person is disqualified from inheriting any property under this Act, it shall devolve as if such person had died before the intestate.

Escheat.

10. If an intestate has left no heir to succeed to his or her property in accordance with the provisions of this Act, such property shall devolve on the Government and the Government shall take the property subject to all the obligations and liabilities to which an heir would have been subject to.

The State Government may, by Notification, make rules for carrying out the purposes of this Act.

PART II
Testamentary succession

Testamentary succession.

11. Every person of sound mind not being a minor may dispose of his property by Will.

Will obtained by fraud etc.

12. A Will or any part of a Will, the making of which has been caused by fraud or coercion or importunity is void.

Will may be revoked or altered.

13. A will may be revoked or altered by the maker of it at any time when he is competent to dispose of his property by Will.

Execution of Will.

14. A Will shall be executed according to the following rules:-

(a) The testator shall sign or shall affix his mark to the Will or it shall be signed by some other person in his presence by his direction.

(b) The signature or the mark of the testator or the signature of the person signing for him shall be so placed that it shall appear that it was intended to give effect to the Will.

(c) The Will shall be attested by two or more witnesses.

SCHEDULE

Heirs in Class I

1. Son, daughter, widow, mother, son of predeceased son, daughter of a predeceased son, widow of a predeceased son.

Heirs in Class II

1. Son's daughter's son
2. Son's daughter's daughter
3. Daughter's son's son
4. Daughter's son's daughter
5. Brother's son
6. Sister's sons
7. Brother's daughter
8. Sister's daughter

Class II heirs shall come into play only in the event of Class I heir not being available.

By Order.

R..K PURKAYASTHA (SSJS)
LR-cum-Secretary
Law Department

File No. 16 (82) LD/P/2008

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